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February 27, 2015

CENTRAL DISTRICT OF CALIFORNIA

BY: _____ TS _____ DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

<p>TIJUANA LENOIR,</p> <p>Plaintiff,</p> <p>v.</p> <p>CAROLYN W. COLVIN, Acting Commissioner of Social Security,</p> <p>Defendant.</p>	<p>}</p> <p>}</p> <p>}</p> <p>}</p> <p>}</p> <p>}</p>	<p>Case No. ED CV 12-1120-DFM</p> <p>MEMORANDUM OPINION AND ORDER</p>
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Plaintiff Tijuana Lenoir appeals from the final decision of the Administrative Law Judge ("ALJ") denying her applications for Disability Insurance and Supplement Security Income benefits. The Court finds that the ALJ's decision was supported by substantial evidence. Therefore, the ALJ's decision is affirmed and this matter is dismissed with prejudice.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed her benefits applications on July 24, 2008, alleging disability beginning October 31, 2007. Administrative Record ("AR") 29. On March 10, 2010, the ALJ issued an unfavorable decision. AR 29-36.

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1 On July 6, 2012, Plaintiff filed this action for judicial review. Dkt. 1. On
2 February 7, 2014, the Court dismissed the action without prejudice due to
3 Plaintiff's failure to prosecute after Plaintiff repeatedly failed to file her
4 memorandum in support her complaint. See Dkt. 37.

5 On March 13, 2014, Plaintiff filed a series of documents, including a
6 motion to revoke the judgment and a document entitled "Reply to Defendant's
7 Answer and Memorandum of Points and Authorities." Dkt. 39, 40
8 ("Memorandum"). On March 21, 2014, the Court granted Plaintiff's motion to
9 revoke the judgment and vacated its judgment of dismissal. Dkt. 45. The Court
10 also deemed Plaintiff's "Reply" to be Plaintiff's Memorandum in Support of
11 Plaintiff's Complaint. Id. at 2.

12 The Court then ordered Defendant to file a Memorandum in Support of
13 Defendant's Answer within thirty days, which Defendant filed on April 19,
14 2014. Dkt. 47 ("Answer"). On October 23, 2014, Plaintiff filed a reply to
15 Defendant's answer. Dkt. 60 ("Reply").

16 II.

17 ISSUE PRESENTED

18 The parties dispute whether the ALJ's final decision was supported by
19 substantial evidence and free of reversible error. See Memorandum at 2-6;
20 Answer at 2-7.¹

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23 ¹ The Memorandum does not identify any particular error in the ALJ's
24 unfavorable decision. Plaintiff argues generally that her impairments have
25 worsened since the date of the ALJ's decision; that the ALJ did not properly
26 evaluate the medical evidence; that the consultative and State Agency
27 physicians were biased; and that the VE's testimony that Plaintiff could
28 perform other work at step five was erroneous. See Memorandum at 4-8.

III.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The ALJ's findings and decision should be upheld if they are free from legal error and are supported by substantial evidence based on the record as a whole. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla, but less than a preponderance. Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports a finding, the reviewing court "must review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1996). "If the evidence can reasonably support either affirming or reversing," the reviewing court "may not substitute its judgment" for that of the Commissioner. Id. at 720-21.

IV.

DISCUSSION

A. The Record Contains Substantial Evidence to Support the ALJ's Decision

The ALJ conducted the five-step disability analysis, as set forth in 20 C.F.R. §§ 404.1520(a) and 416.920(a), as follows:

At step one, the ALJ found that Plaintiff had not performed substantial gainful activity since October 31, 2007, the alleged onset date of her disability. AR 31.

1 At step two, the ALJ found that Plaintiff had the severe impairments of
2 osteoarthritis of the knee, chronic obstructive pulmonary disease,
3 schizophrenia, and affective mood disorder. Id.

4 At step three, the ALJ determined that Plaintiff's impairments did not
5 meet or equal a listed impairment in 20 C.F.R., Part 404, Subpt. P., App.1. AR
6 31. The ALJ also determined at step three that Plaintiff retained the residual
7 functional capacity ("RFC") to perform a range of sedentary to light work²
8 with the following limitations:

9 Specifically, she can lift and/or carry 15 pounds occasionally and
10 less than 10 pounds frequently; stand and/or walk 3 hours in an 8-
11 hour workday; and occasionally stoop or bend. She cannot work
12 in exposure to extremes of temperature or dust, fumes, or strong
13 chemical odors. Her interactions with members of the public, co-
14 workers, and supervisors must be non-intense.

15 AR 32.

16 At step four, the ALJ determined that Plaintiff could not perform her
17 past relevant work as a clerical and assembly worker, office assistant, or office
18 manager. AR 35.

19 At step five, the ALJ relied upon the testimony of a vocational expert
20 ("VE") to find that Plaintiff could perform other work that existed in
21 significant numbers in the regional and national economies, such as electronics
22 worker, credit checker, and hand packer. AR 35-36. The ALJ therefore
23 concluded that Plaintiff was not disabled. AR 36.

24 ² "Sedentary work" involves "lifting no more than 10 pounds at a time
25 and occasionally lifting or carrying articles like docket files, ledgers, and small
26 tools." 20 C.F.R. §§ 404.1567(a), 416.967(a). "Light work involves lifting no
27 more than 20 pounds at a time with frequent lifting or carrying of objects
28 weighing up to 10 pounds." 20 C.F.R. §§ 404.1567(b), 416.967(b).

1 As noted above, Plaintiff does not clearly identify any specific error in
2 the ALJ's findings. Therefore, the Court will review the ALJ's findings to
3 determine if they are supported by substantial evidence in the record and free
4 from error.

5 The ALJ extensively reviewed the medical record and determined that
6 the evidence did not support a finding of disability. AR 32-34. As noted by the
7 ALJ, the medical records documented multiple emergency room visits in 2006
8 and 2007 for complaints of right knee pain. X-rays taken on March 26, 2008
9 showed degenerative joint disease in Plaintiff's right knee. AR 33 (citing AR
10 211). A subsequent x-ray of Plaintiff's right knee taken on April 2, 2009
11 showed advanced degenerative joint disease. AR 34 (citing AR 247). Plaintiff
12 was apparently treated with pain medications and cortisone injections. AR
13 213. There is no indication in the record that Plaintiff received any more
14 extensive treatment, such as surgery.

15 The ALJ also noted that Plaintiff was treated on October 6, 2009 for
16 mental health issues and was diagnosed with schizoaffective disorder and
17 methamphetamine abuse. AR 34 (citing AR 250). Plaintiff was discharged on
18 the same day. Id. A record from a mental health clinic also indicated that
19 Plaintiff was given an anti-psychotic drug on January 3, 2010 and sent home.
20 AR 34 (citing AR 251).

21 The ALJ relied up the consultative examining physician's finding that
22 Plaintiff was capable of performing light work with some limitations on
23 standing and walking. AR 33 (citing AR 213-17). Dr. Gabriel Fabella
24 examined Plaintiff on October 22, 2008. AR 213. The results of Dr. Fabella's
25 examination of Plaintiff demonstrated the following: Plaintiff had some limited
26 range of motion in her back; straight leg raising tests were negative; range of
27 motion was limited in both knees; Plaintiff's gait was mildly antalgic, favoring
28 the right leg; she was able to walk unassisted although she moved slowly; and

1 an x-ray of the right knee showed moderate osteoarthritis. AR 216-17. Dr.
2 Fabella diagnosed Plaintiff with osteoarthritis of both knees, with the right
3 worse than the left; probable osteoarthritis of the lumbar spine with decreased
4 range of motion but no radiculopathy; and asthma. AR 217.

5 The ALJ also relied up the opinion of the consultative psychiatric
6 physician, Dr. Reynaldo Abejuela. AR 33 (citing AR 219-25). Plaintiff
7 complained of hearing voices, depression, and anxiety. AR 220. Her affect was
8 mildly depressed and anxious. AR 221. Dr. Abejuela's examination of Plaintiff
9 was generally unremarkable. AR223-25. Dr. Abejuela diagnosed Plaintiff with
10 depression and anxiety, and offered the "overall assessment" that her
11 "occupational and social functioning impairment is none to mild." AR 224.

12 In addition, the ALJ relied on the opinions of the State Agency
13 reviewing physicians, who essentially agreed with the opinions of Drs. Fabella
14 and Abejuela that Plaintiff could perform light work with some limitations and
15 did not have any severe psychiatric impairment. AR 34 (citing AR 226-30, 231-
16 41, 242-43, 244-46). In fact, the ALJ gave Plaintiff the benefit of the doubt in
17 limiting Plaintiff to light work with some additional postural restrictions. One
18 of the State Agency reviewing physicians actually found Dr. Abejuela's
19 limitation to standing and/or walking for only two to three hours per day too
20 restrictive, noting that Plaintiff's examination revealed only a mild decreased
21 range of motion in her knees and back. AR 230. Notably, there is no medical
22 opinion in the record, including that of a treating physician, opining greater
23 physical or mental limitations than those found by the ALJ.

24 In sum, the ALJ's findings are well-supported by the Plaintiff's medical
25 record. The ALJ's decision was supported by substantial evidence.

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1 **B. Plaintiff Does Not Identify Any Basis for Reversing the ALJ's**
2 **Unfavorable Decision**

3 In her Reply, Plaintiff makes various claims, none of which provide any
4 basis to reverse the ALJ's decision.

5 First, Plaintiff argues that more recent medical tests indicate that her
6 back and knee osteoarthritis has significantly worsened since the ALJ's
7 decision. See Reply at 3-4. However, the relevant disability period is from
8 October 31, 2007, the date Plaintiff alleges she first became disabled, to March
9 10, 2010, the date of the ALJ's decision. The fact that Plaintiff's condition may
10 have worsened years after the ALJ's decision has little or no bearing on the
11 validity of the ALJ's decision. See Turner v. Comm'r of Soc. Sec., 613 F.3d
12 1217, 1224 (9th Cir. 2010) (concluding that ALJ did not err in disregarding a
13 medical opinion rendered two years after disability period at issue had already
14 ended).

15 Second, Plaintiff argues that the examining and reviewing physicians
16 chosen by the Social Security Administration provided erroneous opinions and
17 were biased against Plaintiff. See Memorandum at 4; Reply at 5. However,
18 ALJ's and other quasi-judicial officials, and by extension here, the examining
19 and reviewing physicians, "are presumed to be unbiased." Rollins v.
20 Massanari, 261 F.3d 853, 857 (9th Cir. 2001). This presumption may be
21 "rebutted by a showing of conflict of interest or some other specific reason for
22 disqualification." Id. at 858. Plaintiff does not provide any factual support or
23 citation to the record in support of her bias claim with respect to the examining
24 and reviewing physicians. As a result, her claims of bias are insufficient to
25 warrant reversal of the ALJ's decision. See Sprewell v. Golden State Warriors,
26 266 F.3d 979, 988 (9th Cir. 2001) (stating that the court is not required to
27 accept as true merely conclusory allegations).

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1 Finally, Plaintiff claims that the VE's testimony that there was other
2 work available in significant numbers that Plaintiff could perform was flawed
3 because the VE did not take into account the fact that the national economy
4 has been in an extended and unprecedented recession. Again, Plaintiff does
5 not support her argument with any legal or factual citation. The ALJ was
6 entitled to rely upon the VE's testimony in determining that there was other
7 work available at step five of the sequential evaluation process. See Tackett v.
8 Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999).

9 The ALJ's decision was supported by substantial evidence in the record,
10 and Plaintiff has failed to identify any errors which require reversal of the
11 ALJ's decision. Accordingly, Plaintiff is not entitled to relief.

12 V.

13 **CONCLUSION**

14 For the reasons stated above, the ALJ's decision is affirmed and the
15 matter is dismissed with prejudice.

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17 Dated: February 27, 2015



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20 DOUGLAS F. McCORMICK
21 United States Magistrate Judge
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